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# Amicus Curiae, March 1963

PROBLEMS OF A POLICEMAN . . . SEE PAGE 3

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# Amicus Curiae

VOL. 12, N. 4 THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL 82 MARCH, 1963

# Dean Announces Major Curriculum Changes

## DIXON SCHEDULES APPORTIONMENT SPEECHES

**Don Rowe**

*EDITOR'S NOTE: It is the aim of AMICUS CURIAE to keep the student body informed of the projects and activities undertaken by individual members of the GWU Law faculty. The following article reports on the outstanding work being done by Professor Dixon in the legislative reapportionment—BAKER v. CARR-area.*

Professor Robert G. Dixon, Jr., is rapidly making his voice heard throughout the legal and political science fields of America as an expert in the legal-political aspects of the legislative reapportionment cases. Prof. Dixon very aptly and clearly sets forth some of the problems, possible solutions, and a thorough discussion of cases and background leading up to BAKER v. CARR, 369 U.S. 186 (1962), which triggered the explosion of legislative apportionment cases and issues in his treatise, "Legislative Apportionment and the Federal Constitution," published in LAW AND CONTEMPORARY PROBLEMS, Volume 27, Summer 1962, Number 3, pps. 329-389.

Prof. Dixon is well qualified in this now-very-much-in-the-public-eye problem of legislative reapportionment, having a Ph.D. in Political Science from Syracuse University, 1947, a year as Ford Foundation Faculty Fellow at Stanford University in 1951-52, and a LL.B. from GWU, 1956.

Prof. Dixon will further develop and enlarge on the views he expressed in his article in two speeches he will make in the very near future. His first speech entitled, "Federal-State Relations and BAKER v. CARR, will be presented at an American Society on Legal History Conference at William and Mary University on March 23. This conference will devote its entire program to aspects of Constitutional Law. Prof. Dixon's second speech, entitled "Apportionment Standards and Judicial Power: Is Direct Relief Feasible?", will be presented at the Notre Dame Law School on April 20 at a Conference on Preparation of an Apportionment Case. The conference will also feature presentations by such outstanding legal commentators as Mr. Anthony Lewis of the New York TIMES, Professor McKay of the NYU Law School, and Mr. Alfred L. Scanlon, Washington attorney. Mr. Scanlon, who holds both LL.B. ('46) and LL.M. ('47) degrees from George Washington University, has directed three Maryland cases for the Maryland Committee for Fair Representation. He has achieved reapportionment of the Maryland lower house, has an appeal pending in the United States Supreme Court in the Maryland State Senate case, and early this month filed a challenge to Maryland's county unit system of nominating party candidates for state-wide office.

In his article, Professor Dixon calls the BAKER v. CARR decision second only to MARBURY v. MADISON in terms of involvment of the judiciary in the great questions of democratic institutional arrangements.

The article discusses fully the distinction between actions involving state-law bases, as some state courts do not follow the federal principle of separation of powers and do things which would be clearly outside the "judicial function" under Article Three of the Federal Constitution, and actions involving federal law bases. Apportionment cases before BAKER v. CARR in state and federal courts are described and analyzed. Prof. Dixon suggests that BAKER v. CARR may not necessarily have overruled COLEGROVE v. GREEN, 328 U.S. 549 (1946), the famous case in which the Supreme Court decided that courts should stay out of the "political thicket" and not exercise jurisdiction because of the "political question" involved, as COLEGROOVE involved congressional districts and BAKER involved state legislative districts.

The article makes a thorough analysis of the BAKER v. CARR decision. Prof. Dixon points out that the Supreme Court did not nearly put an end to the reapportionment problem as the Court remanded without reaching the merits and without giving the District Court any guidance on the possible nature or dimensions of a federal restriction on state discretion in apportionments. The analysis includes a thorough discussion of the jurisdiction of the federal district courts, of claims that state legislative apportionments are in violation of the Fourteenth Amendment, the standing of the resident voter plaintiffs to assert such a claim, and the justiciability of such claims despite previous "political question" precedents.

The article presents a most complete analysis of the two self-executing clauses of the Fourteenth Amendment which most possibly support judicial intervention: the due process and the

**(Continued on Page 2)**

## HORNBOOKS AVAILABLE

A program for the loan of hornbooks was adopted by the Student Bar Association Board of Governors at its April meeting. The program, which will begin with a $100 appropriation, is designed to provide short term loans of hornbooks to students without charge. The books to be purchased will be for courses like contracts, trusts and estates, evidence and torts, which are taken by a large number of students. The books will be kept in an easily accessible place, probably in the business office.

SBA President Hovey, in presenting the Program to the board, stated that while many students would like to use the hornbooks more in their studying, most cannot afford them for each of their courses. While the library has hornbooks he emphasized that many students do not use them because of the inaccessibility of the library, the limited number of books available, and the fact that they cannot be taken out of the library.

Ray Guzman, as Book Store Treasurer was designated to work out the administrative arrangements. It is planned to begin the program this spring. It is hoped that donations of books by alumni and local law firms might supplement the initial appropriation of $100. The initial appropriation comes from the funds of the SBA Book Exchange. It represents part of the profits from the student-managed book exchange operations.

## APRIL CONFERENCE

A Conference on Problems of Doing Business within the European Common Market will be held April 8 and 9, under the joint sponsorship of the National Law Center and Commerce Clearing House, Inc.

Panel discussions are planned, aimed at producing detailed information about four specific problems: (a) establishing an operation within the Common Market; (b) taxes, both European and American; (c) patents and industrial property; and (d) antitrust.

Speakers will be brought from Europe to take part in the sessions. In addition, experts from government, business, banking and the legal profession will take part.

The sessions will be held in Lisner Auditorium. A banquet is planned at the International Inn for the evening of April 8.

Directors of the Conference is Professor Arthur S. Miller.

**Dean Robert Kramer has announced that a major change in the law school curriculum will take effect next Fall. As a result of these changes the student will have four extra hours of electives. The new curriculum is set forth below:**

**1963-1964**
**Morning**

| Fall | Spring |
|---|---|
| **First Year Required** | |
| Contracts I (2) | Contracts II (4) |
| Torts I (3) | Torts II (2) |
| Legal Method (3) | Real Property (4)* |
| Personal Property (2) | Constitutional Law (4) |
| Criminal Law (4) | |
| **Second Year Required** | |
| Civil Procedure (4) | Evidence (4) |
| (Conveyances (2)*) | Administrative Law (3) |

* To include conveyancing materials.

* Only if Real Property was taken Prior to September 1963.

**Third Year Required**
(Fall or Spring)
Trial Practice Court (2)

**1963-1964**
**Evening**

| Fall | Spring |
|---|---|
| **First Year Required** | |
| Contracts I (2) | Contracts II (4) |
| Torts I (3) | Torts II (2) |
| Legal Method (3) | Criminal Law (4) |
| Personal Property (2) | |
| **Second Year Required** | |
| Real Property* (4) | Constitutional Law (4) |
| Civil Procedure (4) | (Conveyances (2) #) |

* To include conveyancing materials.

\# Only if Real Property was taken prior to September 1963.

**Third Year Required**
Evidence (4)
Administrative Law (3)

**Fourth Year Required** (Fall or Spring)
Trial Practice Court (2) or Patent Trial Practice Court (2)

**Real Property**

Real Property has been converted into a more practical course by taking out the future interest material and replacing it with the material now taught in conveyances. Dean Benson indicated that it was quite common to teach Conveyances in the first year property course. Conveyances will be dropped from the curriculum as soon as it has been taken by all the people who had Real Property prior to September 1963.

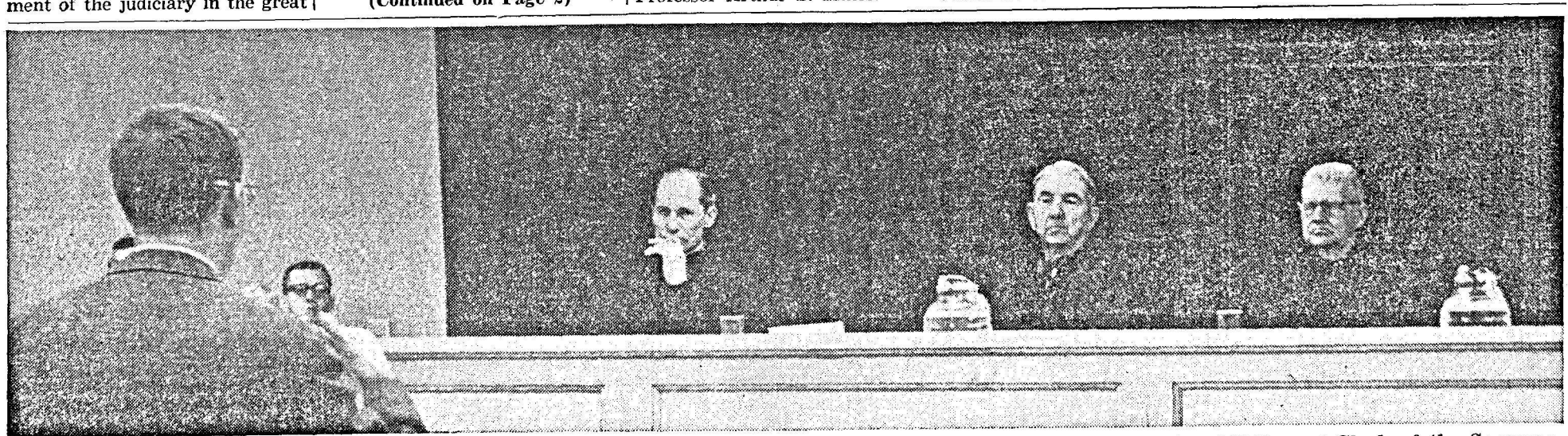
Future interests are covered in Trust and Estates. Thus, by revising Real Property the duplication of material was eliminated. Professor David Weaver, who teaches Trust and Estates, plans to change the second semester with more work on fundamentals since student will now be taking the course with no background in future interests. Professor Weaver pointed out that Trusts and Estates is an elective course and thus as a result of the change in Real Property it will be possible for a student to graduate from the Law School without ever hearing about the Statute of Uses and the Rule Against Perpetuities. He said this fact stressed the importance of electing Trust and Estates.

**Trial Practice Court**

Only one semester (2 hours) of Trial Practice Court rather than two semesters will be required starting in the Fall. The course will be offered in both the Fall and Spring with a limited enrollment so that an equal number of students take the course each semester. A second 2 hours will be elective. By cutting the mandatory second 2 hour course and keeping the same number of judges and clerks, it is felt that the teaching load will be cut and that the judges will have more time to devote to each case.

Dean Kramer indicated that he believed the course always has been of great value. However, certain problems areas have come to the attention of the faculty. (It was pointed out by Dean Kramer that faculty action was well under way before the editorial on Trial Practice Court in the last issue of Amicus Curiae). When asked where the faculty would be found to teach the second elective semester of Trial Practice in case a large number of students elected to take it, Dean Carville Benson said that this and several other problems involving actual operation under

**(Continued on Page 2)**



**A tense moment as counsel argues a point before a distinguished bench. A record crowd turned out on March 15, 1963, to hear the Van Vleck Case Club finals, argued before Justices White and Clark of the Supreme Court, and Judge Bastian of the Court of Appeals.**

# Amicus Curiae

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# AMICUS CURIAE ON . . .

## CURRICULUM CHANGES

**We think that the Administration has very wisely made important curriculum changes that will benefit the student body, especially in extending Torts to a five-hour course.**

**We do not believe, however, that the change in Trial Practice Session, i.e., requiring only two hours, is the medicince needed to cure what ails the course. Its illness is greater that that. Therefore, we plan to go ahead with our plans for a full discussion in April—a post mortem as it were. Comments from students are desired!**

## WHO'S CONSENSUS

**Does the record of the Board of Governors reflect the will of the constituency? Or, does it pursue only the vested interests of the two dominate fraternities whose brothers comprise its membership, save one? Or, in fact, is the Board of Governors a facade behind which a few "hungry" men maneuver to achieve self-serving objectives? For the answer, attend its remaining meetings and see for yourself.**

## REPRESENTATIVE OF THE PEOPLE?

**Charlie Mays has resigned as Treasurer of the SBA, in part for personal reasons, in part over what he terms as President Hal Hovey's dictatorial powers over the purse strings. As a member elected to the SBA by the student body, however, we wonder if Mr. Mays wasn't derelict in his duty owed to the body by not making more of a public issue of the matter, if it is true, and fighting through the Board in order to control Mr. Hovey if, in fact, Mr. Hovey is exceeding his powers?**

## CANDIDATE

John Stokes announces his candidacy for President of the Student Bar Association. Stokes is currently serving as Day Representative to the SBA and is on Law Review. He has participated in the Case Club competition, is Chairman of the Legislative Drafting Bureau, and is on the SBA Constitutional Revision Committee. He also holds a Trustee Scholarship.

Working towards his degree in political science at Texas Tech, Stokes was selected for "Who's Who in American Universities and Colleges" while serving as Chief Justice of the Tech Supreme Court and Chairman of the College Awards Board. He was President of the Pre-Law Society, was chosen its outstanding member, and was selected for Pi Sigma Alpha, government honorary. While earning three letters in varsity swimming, he was President of the Dolphin fraternity. Stokes is also past Vice Chairman of the Texas State Young Republican Federation and was charter President of the Tech YR Club.

## CANDIDATE

On April 13, John Stohlton, third-year night student, announced his candidacy for the Presidency of the Student Bar Association. As an undergraduate at Brigham Young University, Stohlton held such offices as Justice of Student Supreme Court, member of both the Inter-Organizational and the Associated Men's Student Councils, Dorm President, and various fraternity office including Vice President. He also was on the Dean's List, member of the Political Science Honor society, and Assistant to Director of Inter-Mural athletics. During his undergraduate career, Stohlton also was named as delegate to State Republican Convention.

At GW Stohlton is participating in the Law Review Apprentice program, is Associate Editor of **Amicus Curiae**, and member of Delta Theta Phi Law Fraternity.

Outside of the Law School, he serves on the Board of Directors of the D.C. Young Republicans, initiated the 88th Congress Breakfast Club, and holds the position of clerk for the law firm of Keller and Hickman.



## Changes

(Continued from Page 1)

the new system had not yet been finally decided on and that more details would be announced later in the Spring.

**Torts**

Torts has been enlarged from 4 to 5 credits and split up into a 2 and 3 hour course. According to Professor David Seidelson the extra hour will allow time to cover more advanced material which may include defamation, right of privacy, survival and wrongful death, and recoveries. Professor Sharpe named nuisance, wrongful death and defamation as possible added topics.

**Legal Method**

Legal Method has been cut from a four hour to a three hour course. Dean Benson indicated that the course would be generally condensed rather than dropping any specific portion. The change was necessitated by the decision to add an extra hour to torts.

**Contracts**

There will be no real change in the content of contracts. The number of hours in Contracts I and II have merely been changed around for scheduling purposes.

## PHI DELTA PHI

Chairman Paul Rand Dixon of the Federal Trade Commission addressed the February professional luncheon of the Phi Delta Phi held at the Lawyers' Club. Brother Dixon spoke on the work of the FTC and on the need for regulatory agencies in a complex society such as ours.

On the evening of April 6th, Senator Daniel K. Inouye (D-Hawaii) will be honored as the John Marshall Inn Alumnus of the Year at a reception to be held at the New Senate Office Building. Invited guests will include the Brothers of John Marshall Inn's classes of 1952 and 1953. Also invited are Phi Delta Phi Congressmen and other prominent Washington Brothers.

Phi Delta Phi faculty members have been in great demand as speakers at various fraternity functions this year. Dean Nutting and Professor Freedman will be members of a panel discussion to be held by P.A.D. this spring.

## DELTA THETA PHI

We, Delta Thet's, having tremendously enjoyed both Sigurd Anderson, FTC Commissioner, and Leonard Kardy, States Attorney of Montgomery County, at our last two professional meetings, are looking forward with even greater zeal to the remaining events on our calendar.

Both brothers and guests (some eighty-five people in all) found Brother Kardy (an alumnus of GW's Wilson Senate) an extremely interesting speaker, his views on **Tropic of Cancer** and the Mallory and Durham Rules provoking many questions from the floor.

The interest aroused by our past speakers has carried over and, accordingly, we are in great hopes that our final professional meeting of the spring semester on March 29, at which former Governor of Virginia, J. Lindsay Almond, now a judge on the Court of Customs and Patent Appeals, is featured as guest speaker, will set some sort of an unofficial record for attendance at a G.W. Law Fraternity Professional Meeting. All unaffiliates are invited. Refreshments will be served.

Last, but certainly not least on our social calendar, will be our annual Spring Cocktail Party, to be held on April 6 at the Willard Hotel's Crystal Room from 9 p.m. to 1 a.m. Music will be furnished by the Blazers. We expect this function to be the best yet of a long line of parties including last fall's extravaganza at the Shoreham. Attendance will be by invitation.



## Dixon Schedules

(Continued from Page 1)

equal protection clauses. This section of the article probably has the most legal impact. Prof. Dixon suggests (p. 368) that in the context of legislative apportionment the equal protection standard of reasonableness, will be influenced mightily by the manner in which the burden of proof on the issue is allocated, and follows with an analysis of the presumptions (i.e., that continued population disparities raise a presumption that an illegitimate classifying factor is operating) and the burden of proof issue.

Prof. Dixon prefers the use of the generalized due process standard of reasonableness instead of the arithmetically orientated equal protection standard. Under the due process principle, the Court could hold that a representative system under which a major group of complainants is excluded from effective voice in either house is unreasonable because minority process is not due process. By this approach the Court would avoid the difficult quest for a showing of "purposeful or intentional"—rather than presumed— discriminations which the precedent case of SNOWDEN v. HUGHES, 321 U.S. 1 (1944), required in regard to equal protection. The due process principle would help avoid the problem of defining "equality" and how much departure from this theoretical "equality" would still keep it within constitutional limits. Some of the factors which Prof. Dixon feels must be considered in determining what "equality" is: recognition of political sub-divisions, recognition of economic dispersion, representation from the entire state, and political party factors.

The article discusses the post-BAKER v. CARR cases decided in federal and state courts and their quest for a standard are analyzed. The Supreme Court has not yet taken any action on several appeals pending before it including appeals affecting both legislative houses of New York, Alabama, Oklahoma, and Virginia, the Maryland and Michigan Senators, and the Georgia Congressional Districts.

Prof. Dixon pointed out to this reporter that some of these reapportionment suits present the peculiar problem of maintaining a true adversary action, which is of course desirable to bring out all possible viewpoints. In Oklahoma and Michigan the named defendants (usually the executive branch officials) joined the plaintiff's cause and the maintenance of opposing point of view fell to interveners, which were state legislators and citizens. Prof. Dixon feels that while civic concern and public interests are motivating the individual citizens to file their reapportionment suits, the problem is essentially political, and in politics no one is neutral. The relief usually asked for are: a declaration of the invalidity of the present system, injunctions to prevent future elections under the present system, an election at large or some other appropriate relief after the legislature has had some time to act.

Prof. Dixon calls the BAKER v. CARR decision a large step in the direction of close judicial scrutiny of the politics of the people, influenced by the fact of exhaustion of non-judicial modes of relief over a period of several decades. Prof. Dixon sees the decision as a thrust for equality which he calls an ardent mark of American history.

## NEW SBA MEMBERS

Donald A. Rowe and Robert L. Werdig, both associate editors of the **Amicus Curiae**, were appointed to the Student Board of Governors as Treasurer and Student-Council Representative, respectively. Observers report that prior to Rowe's confirmation, President Hovey nominated two other students who failed to receive confirmation by the Board because the nominees could not assure the Board membership that they would not be candidates in the Spring S.B.A. elections. The vote for Mr. Werdig was unanimous.

## SBA BRIEFCASE

**Hal Hovey**

Prior to elections last spring considerable discussion of the present organization of the Student Bar Association occurred. As many students realize, the Student Bar Association is presently governed by a Board of Governors which consists of 15 members. Eleven of these members are elected (President, Secretary, Treasurer, Book Exchange Manager and Treasurer, Night and Day Vice Presidents and two day and two night representatives). Appointed members include the Legal Aid Chairman, Student Council representative, a Case Club representative and the American Law Student Association representative.

Questions have been raised as to whether it is appropriate to have five appointed committee chairmen in what is essentially a legislative body. Appointment of these individuals to voting membership on the board has a tendency to interject school politics into posts which many feel should be filled on the basis of merit alone and gives appointed members as much voting rights as members who have passed the test of selection by a majority of law students in an election. On the other hand it can be argued that appointment brings to student government some high quality leaders who would not otherwise be available.

Another question is that of representation on the board. At the present time freshmen during their first year have no voice in the board which spends their money—taxed from them as a small part of the $10 fee paid at registration. Because elections are held in the spring freshmen who enter in the fall have no opportunity to select representatives until the spring elections to select the officers for their second year. On the other hand it can be argued that election of freshmen representatives would encourage freshmen to participate in activities before they had the opportunity to find out whether they could cope with the academic requirements of law school. In addition, freshmen probably do not know each other sufficiently well in the fall term to be able to intelligently select one or two of their number to represent them.

A third problem arises when the representation of day and night students are compared. At the present time night students outnumber day students by a ratio of about 2 to 1. Thus, one day student equals two night students which, when stated as a bald propostion, may not be without support. Some contend that the patent students, who are about one-third of the total student body, should have representatives —either through their patent bar association or by direct election.

In addition to the composition of the Board itself, the administrative arrangements of the SBA have evolved far beyond those contemplated when the original constitution was adopted six years ago. The original constitution contemplated an organization run by a Board of fifteen members, the members of which would chair all important activities and also act as legislators. In recent years there has been a trend to a clearer distinction between Board members acting as policy makers and activity chairmen acting as policy executors. Many consider this year to be the time to reflect these changes in the Constitution.

These and other issues will be before the Board for the next month. It is expected that some type of constitutional revision will be submitted for referrendum in the forthcoming elections though the exact nature of any changes are yet to be worked out. All students are eligible to attend these meetings.

# INVESTIGATIVE ARRESTS SHOULD BE RETAINED

**The Commissioners for the District of Columbia have ordered that police arrests for investigation shall cease on March 15, 1963. Certain congressmen, in the past few weeks, have suggested that these arrests be retained until some alternative plan can be worked out. As this paper goes to press, the Commissioners order remains in effect. The editors think, however, that the view of the man upon whose soulders responsibility for effective police administration rests is worthy of reproducing here. The following excerpts are from a report of Chief of Police Robert V. Murray submitted as an answer to the report of the Commissioners Committee on Police Arrests for Investigation, the so-called "Horsky Committee Report."**

**Believing that it is quite easy to overlook the practical problems of criminal justice and believing that often, too much concern is given the criminal rather than the victim, we present these excerpts for your consideration. [Editor's Note]**

• • •

Statutes in a number of states specifically authorize investigation arrests or arrests on suspicion of felonies and provide for specified periods of detention before charging an individual with a specific or formal charge. Several states, namely Delaware, New Hampshire, and Rhode Island, have enacted forms of the Uniform Arrest Act which provides for from two to four hours detention prior to making an arrest on a formal charge. This statute specifically exempts this type of detention from what is defined as an arrest.

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In most other states not having specific statutes covering the period of detention for the purpose of continuing an investigation of a suspected felony, varying time periods for investigation have been authorized, either through approval by court or by practice and authorization of the chief prosecutor, the time ranging from twenty-four hours upwards. In two separate cases in one state, specific approval was given by court opinion for holding a prisoner incommunicado for three days in one case and, in the other, for six days. In another state the circuit court of appeals held that the state could deny prisoners legal counsel between the time of arrest and arraignment.

The practice of allowing time for proper police interrogation of suspects has been studied and reported on by a number of outstanding authorities, some of which are alluded to in the report of the Commissioners' Committee. Some of the authorities speak for and some against the practice of interrogation of suspects and defendants. This proposition has also been discussed in opinions handed down by our own Circuit Court of Appeals in this jurisdiction. It is interesting to note that a number of these opinions speak favorably of and even justify the practice of interrogation and confronting defendants prior to charging. **This whole matter seems to me to be part of the overall problem of balancing the Constitutional rights of the individual against the right of society to be free and protected from the depredations of criminals.**

• • •

It seems to me that in evaluating a practice such as arrests for investigation, it is highly important to consider the integrity of the police agency. Along this line, I am happy to note that the Commissioners' Committee has reported that it was convinced of the overall integrity of the Metropolitan Police Department. It is gratifying to read this kind of comment from the Committee since it has been the effort of my administration to build up the integrity of the Metropolitan Police Department through a process of selective determination in appointment of new personnel, improved and expanded training programs, and strict enforcement of discipline over a period of some eleven years. I have viewed this as of the utmost importance since, if we do not maintain high integrity in the law enforcement agency, we must recognize that it would be possible for law enforcement officers to misrepresent or even falsify evidence in the interest of obtaining a conviction. I am certain that we have not had this type of wrongful motivation within the Metropolitan Police Department, but the matter of integrity goes far beyond this.

**I also think it is most important, in weighing the pros and cons of this problem, to consider whether or not any abuses have been apparent under the established procedure. The Committee's report makes reference to and quotes authorities to the effect that investigation arrests make the opportunity for third-degree methods. However, such methods are not condoned in the Metropolitan Police Department, particularly by this administration, and there has been no evidence come to light in recent times to justify any thought that the members of this Department engage in third-degree methods. In fact, the Commissioners' Committee has stated that they found no evidence of such practices.**

The Committee has also properly concluded that the Metropolitan Police Department does not engage in the practice of harassment of known criminals with investigation arrests as a means of driving them out of the city. It is my observation from many years in police work that investigation arrests are made on the basis of observations, information and intelligence coming to the knowledge of individual police officers from which they determine that a crime has been committed and there is reason to believe that the individual arrested has committed that crime.

The report indicates that there are no clear standards which define when an arrest for investigation may or will be made. In answer to this, I would like to say that for many years past every member of the Police Department, after appointment, has been put through a twelve-week training period in our Police Training Division. During this twelve-week period, among other subjects that are studied by the young officers is the Law of Arrest. For this purpose the instructors in the Training Division use the **Law of Arrest** by Hawley, Voorhees, Dax and Tibbs, Alexander and other authorities, as well as the provisions of the D.C. Code.

• • •

Chapter 33 of the Manual for the government of the Police Department sets forth general principles of law and Section 3 of the chapter specifies in part that a police officer is justified in arresting one whom he has reasonable grounds to believe has committed a felony even though the person arrested should afterward prove to be innocent.

Section 4 specifies that if a police officer has **probable cause** to believe because of facts known to him or communicated to him by a reliable informant that an individual is guilty of a felony, he has the right and duty to arrest that individual with or without a warrant. This Section, which is referred to in the Committee's report, is quoted on the reverse side of the report of arrest for investigation form (P.D. Form 104) as a reminder to police officers that the grounds for arresting for a felony offense is that of probable cause.

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**I also cannot agree that, so far as the Metropolitan Police Department is concerned, the police acting on their own cannot be trusted. Many instances could be cited where the members of this Department have gone out of their way to clear persons accused of crime where there were many indications that they had committed the offense, in fact, to the extent of being identified by an eye-witness. This, I think, is a further indication of the integrity of the Department. However, it is fair to say that in practice, despite instruction, lectures and training, it is found that the degree of evidence which will satisfy one police officer will not always satisfy one of greater experience with court procedures and decisions. It is noted that there are, in fact, even occasions where judges differ in their opinions.**

**I would take issue with the statement that arrests for investigation are assumed to be made without probable cause. I feel that, certainly, in the great majority of these cases there is probable cause to justify the arrest, even on the basis of the sketchy report filled in on the investigation arrest form. It is emphasized that actions by a prospective defendant in the eyes of an experienced police officer will be significant to him when it may mean nothing to a casual observer. This has been alluded to in the case of Bell versus the United States—254 F 2nd 82 (D.C. Circuit 1958) and the following is quoted from this opinion: "The pertinent circumstances are those of the moment, the actual ones. Officers patrolling the streets at night do not prearrange the settings. They do not schedule their steps in the calm of an office.**

**ROBERT V. MURRAY**
**CHIEF OF POLICE**

*Robert V. Murray — Chief of Police—Washington, D. C. Born in Havre de Grace, Maryland, January 2, 1905. Appointed to the Metropolitan Police Department, Washington, D. C., on September 3, 1930.*

*He served in* nearly *every rank in the Uniformed Division—and in* every *rank in the Detective Division including several years in the Homicide Squad and Robbery Squad and as Chief of Detectives.*

Chief Murray is Past President of the International Association of Chiefs of Police.

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**Things just happen. They are required as a matter of duty to act as reasonably prudent men would act under the circumstances as those circumstances happen."**

• • •

**I question the conclusion that arrests for investigation is an illegal practice widely indulged in, since it is shown that the majority of these cases are justified on probable cause for belief of a felony. It should be emphasized here that many situations occur in police work in which arrests can be fully justified by the most stringent application of probable cause; and yet, inquiry and investigation after the arrest is made discloses that the prospective defendant should not be formally charged because a case could not be substantiated in court. If all prospective defendants were formally charged solely on the basis of sufficient probable cause to justify the arrest, many cases would develop where the individuals would have to obtain bond or be held for their appearance at the next session of court, engaging an attorney to represent them. Then, when the case is presented to the Assistant United States Attorney in court the following morning, he could take no action except to "no paper" the case based on the officer's report.**

In connection with the reference to detention having been unwarranted in those cases where the persons are released, it is my position that in all cases where there is probable cause for the arrest there is ample justification for detention.

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Arrests without a warrant are described in the report as "emergency" situations. While I have no question about the legal requirement of prompt production of a prisoner before a magistrate after an arrest without a warrant, it seems to me that the statutes and court opinions on the matter authorize the arrest of persons for a felony offense on probable cause, without this being solely an "emergency" situation.

In connection with the reference to notification of friends, it would appear that those cases have been overlooked where the prisoner is arrested at his home or in other premises where friends or relatives would be aware of his arrest. There are many cases, of course, where the prisoner would not want anyone notified of his arrest and, in a very small percent of the cases, would a prisoner request an attorney.

Further, it is a fact that in cases involving known criminals, in particular, they already know of their rights under the **Mallory** Doctrine, the requirement on the police that they be promptly produced in court, as well as their right to remain silent. Although the Department is attempting to abide by the instructions of the **Mallory** opinion, **it is significant to note that in a recent arrest the prisoner had a rough draft written out in longhand of a proposed appeal in his case.**

**I would also question the Committee's conclusion that a major reason why the police arrest for investigation, even when they have probable cause to arrest for a crime, is apparently the view that such an arrest serves to avoid the effect of Rule 5(a) of the Federal Rules of Criminal Procedure, as interpreted in the Mallory Case. Knowing police work as I do, I cannot accept the view that members of the Metropolitan Police Department take any prior thought as to whether or not such an arrest will avoid the effect of Rule 5(a). Investigation arrests long antedated the Mallory Decision, and I feel strongly that the great majority of these cases are made based on the facts and situations which confront the officer at the moment and without any thought for the effect of Rule 5(a).**

I agree with the Committee's statement that everyone should be willing to cooperate with the police, but I cannot agree with the statement that more persons will be willing to do so when the police cease making arrests for investigation. I think it is unrealistic to suppose that hardened criminals are going to cooperate with the police in interrogations on the street or in their homes.

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**In connection with the reference to dragnet arrests and the dragnet technique, I would emphasize that I have spoken against this type of technique and, as a matter of policy, this administration does not approve or condone such methods.**

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**It is strongly urged that serious consideration be given to some satisfactory alternatives in view of the Committee's recommendations. One such alternative would be enactment of certain portions of the Uniform Act . . . The Uniform Arrest Act was drafted as a model act to reconcile the law as written with the law in action and deals only with arrests by police officers since it was felt that existing law provides adequately for arrests by private persons. In an article published in the Virginia Law Review, Professor Warner states that present law is entirely adequate to meet the modern needs for questioning and detaining suspects. Either by common law or statute, offiers are said to have the right to arrest without a warrant any person whom they reasonably believe is committing, or has committed, a felony or a misdemeanor (in some states, any misdemeanor; in others, only breaches of the peace). In addition, a peace officer has the right to prevent a person from committing a felony or misdemeanor in his presence. For example, even in a state in which the right to arrest without a warrant for misdemeanors extends only to breaches of the peace, an officers has the right to prevent a thief from taking a robe from a parked car.**

As to the authorization for questioning suspects, Section 2 of the Uniform Arrest Act provides:

"(1) A peace officer may stop any persons abroad whom he has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand of him his name, address, business abroad and whither he is going.

"(2) Any person so questioned who fails to identify himself or explain his actions to the satisfaction of the officer may be detained and further questioned and investigated.

"(3) The total period of detention provided for by this section shall not exceed two hours. Such detention is not an arrest and shall not be recorded as an arrest in any official record. As the end of the detention the person so detained shall be released or be arrested and charged with a crime."

The article cites that an officer is usually able to decide at once whether to let a suspect go or to arrest and charge him with a crime after stopping and questioning him. Occasionally, however, further verification is necessary.

The provision in Section 2 permitting an officer to detain for further questioning and investigation a suspect who fails to identify himself or explain his actions satisfactorily is meant to cover such situations. The two-hour limitation is cited to prevent temporary detention from being transferred into imprisonment excommunicado, without the safeguards of arrest and its consequent responsibilities.

The section provides that such detention is not an arrest and shall not be recorded as such in any official record. The definition of an arrest in Section 1 is "the taking of a person into custody in order that he may be forthcoming to answer for the commission of a crime." Detention, of course, is held to be something closely akin to what is ordinarily considered an arrest, but not calling it such even when it includes taking the suspect to the police station for further inquiry, and may prevent his humiliation. He will not have his name entered on the police blotter. If he is ever asked, it is stated, when on the witness stand, seeking employment, or running for office whether he has ever been arrested, he will still be able to give a negative answer.

Section 2 is based on a similar Massachusetts statute and Professor Warner felt that its constitutionality would be easier to maintain than that of the Massachusetts statute and cited that many statutes enlarging the common law right of police officers to make arrests have been held constitutional, holding that the test would be whether the provisions of the proposed statute were reasonable.

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**In view of the widespread practice of detaining suspects for proper police interrogation on probable cause and what I feel is the demonstrated need for such procedure for effective law enforcement; the recognition of this need, and approval in a number of judicial opinions, including our own Court of Appeals, of a period of time for proper police interrogation and investigation before formally charging persons detained in connection with a criminal offense; the practice in the Department of instructing new men, as well as officials at the command level, concerning the established Law of Arrest as expounded on by authorities in the field and judicial decisions on this matter; as well as failure to show abuse by members of this Department, I strongly urge the Commissioners not to implement the recommendation of the Committee on Police Arrests for Investigation until satisfactory alternatives are established to provide the Police Force with tools to continue an effective war on crime.**

# OPPORTUNITY OF INTERNATIONAL LAW

**Richard F. Record, Jr.**

***SBA World Peace Through World Law Chairman***

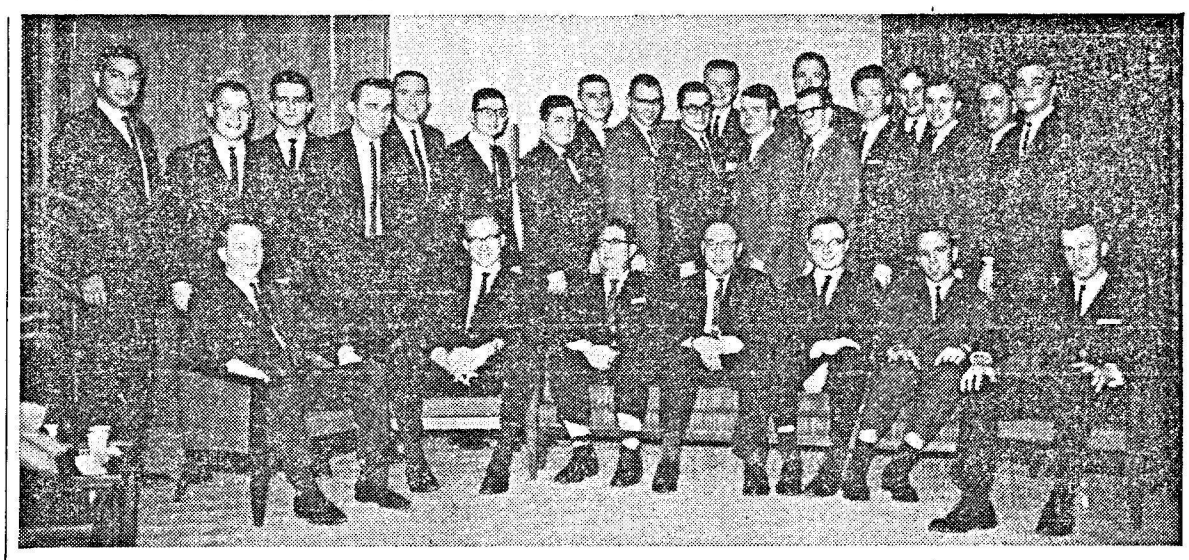
**There are various attractions of international law operating to draw lawyers and law students to a serious and sustained study of it. Not the least of these was noted many years ago by Dean Wigmore when he stated that "virtually every principle of International Law has had application in our United States practice, and is still potential of a fee to be earned by a practitioner." Since Dean Wigmore's statement over 20 years ago, the points of contact between the United States and the rest of the world and the interdependence of all nations have had a great and rapid growth. (No doubt fees have kept pace.) An inevitable consequence of this great change in the affairs of the world and each individual nation has been the appearance of new legal developments and problems. The extent of these international legal changes and their significance to the profession was indicated in a recent book by Judge Prettyman on administrative law entitled Trial By Agency. There he foresees the greatest problems for administrative law arising from changes on the international scene. Considering the overwhelming importance of what is denominated administrative law, Judge Prettyman is really saying that very few active lawyers in the future will not be concerned with international developments and law.**

In recent lectures and books, C. P. Snow has argued that because decisions of enormous importance for the welfare and future of mankind traditionally made by politicians and other non-scientific experts now involve overwhelmingly important scientific factors, scientific experts are better-equipped to make the best decisions. This challenge is relevant not only in politics and government but in law and particularly in those unsettled or immature areas of the law dealing with problems of expanding technology or science. International law is an area with many such problems.

In his book Judge Prettyman ponders who will decide, and how, international labor disputes, the disposition of rocket routes in space, the formulation of rules governing weather control, and other matters. Political problems such as disarmament, control and use of outer space, and the law of the seas also involve complicated scientific factors. The objection may be heard here that there are many areas of international law where scientific factors do not predominate and where the lawyer's traditional role in the development of law is unchallenged. These would include commercial matters such as investment guaranties, claims settlements, and commercial arbitration. But the reply to this is that the law on these subjects is rather well-developed and even if it were not these are not problems the solution to which is fundamental to the establishment and maintenance of world peace through world law. The solution to the fundamental problems usually involve very technical scientific aspects. It is on these problems that the lawyer's contributions must be made and accepted or a rule other than of law will be the result.

The importance of lawyers in a society where a rule of law is established is generally recognized. Dean Pound was stating an old, old idea when he said that to the extent that lawyers are not strong and independent, despotism prospers. The reason why lawyer-participation in the establishment of a rule of law is desirable is related. In a recent article on "International Legal Studies," John B. Howard states that the lawyer is fitted ". . . especially well for the tasks of translating knowledge into responsible action, of choosing among contingent alternative causes of action, of guiding action through the formulation of policy and law, of institution building . . . The scientist proceeds on an assumption (tested by experience) that the world is ordered, that this order is to be discovered by him and that from his observations and controlled experiments he can draw generalizations that have universal validity. The lawyer, in contrast, proceeds on assumptions that order has to be created, that the contingency of alternative potential orders has to be resolved through action based on responsible judgment, and that this requires the participation and active collaboration of those among whom relations are to be ordered." Morris L. Ernst has put it in slightly more enthusiastic language: "I believe that history will prove that the legal profession, in our culture, is the only skill or discipline equipped, fit and qualified to lead the people." **47 A.B.A.J. 959** (1961). And of course deTocqueville is replete with observations on the vital role of American lawyers in the resolution of national problems.

And the establishment of world peace through world law is preeminently an American problem. As the most influential nation in the non-Communist world, our considered views and theories of international law should be the most significant shaping force in the establishment of world peace through world law and in this process of "institution building," the American bar should have an important responsibility. To the extent that it has such a responsibility, the American bar has an opportunity for independent action which is almost unique in history: to play the decisive role in the development and establishment of a rule of law which will govern the developing international situation for generations to come. It is not a mere invitation to glory: it is a duty to fulfill the Anglo-American legal heritage and a prerequisite for American national security in the long run. In a day when lawyers worry about the encroachment of banks and other financial institutions on property and estate planning practice and the possible loss of independence to insurance companies, big corporations, and government, this is the opportunity of international law.



**Delta Theta Phi had its Fall initiation on January 6, 1963. The following new brothers were initiated; standing, left to right, S. Gordon, R. Litton. M. Keshishian, E. Mckechnie, C. Shaw, S. Katz, R. Goldman, T. Sherman, R. Egan, J. Knebel, F. Haskell, J. Wright, J. King, A. Monahan, J. Mygatt, A. Garrett, D. Lambert, P. Cook, and A. Grant.**

**The new brothers, seated, left to right, are: N. Johnson, J. Scherlacher, A. Spiher, J. Eisner, J. Levine, H. Rosen, and T. McNulty. E. Lewis was initiated, but was not present for the picture.**

## PHI ALPHA DELTA

On the 8th of February Judge Wright of the United States Court of Appeals spoke to the brothers of Phi Alpha Delta Law Fraternity at the first Professional meeting of the school semester. The meeting took place at the National Lawyers Club. A few days later the Washington papers reported on a speech given by Judge Wright before another group and noted that it was the first occasion that Judge Wright had spoken in public on the subject of civil rights. Those students attending the Phi Alpha Delta program recognized the error of this claim. Judge Wright had as his topic for his meeting with the members of Phi Alpha Delta and their guests the problem of civil rights in the United States.

On March 23, what may be the most important event for the Fraternity this semester will take place. On that day Mr. Justice Goldberg will be initiated into the Fraternity as a Brother of Phi Alpha Delta. Mr. Justice Reed, Douglas, and Clark, all Brothers in the Fraternity, will speak to the members, as will Mr. Justice Goldberg. The initiation will take place at a banquet to be given at the Mayflower Hotel.

Also scheduled during the month of March is a series of appellate arguments given by the members and which will be heard by members of the faculty. This program, the only one of its type sponsored by legal fraternities at the Law School, is designed for those members who feel that they would like to engage in appellate argument but who are unable to meet the rigorous demands made on their time by the Van Vleck Case Club competitions and the Moot Court arguments. It is hoped that this program will complement the other two programs by allowing more students to engage in them. The program is similar to that presented at other Law Schools.

The members of Phi Alpha Delta would again like to extend to the unaffiliated students of the Law School their invitation to attend the open functions of the fraternity and to meet with them this semester.

**CAPITAL PUNISHMENT:** A World View, by James Avery Joyce: Grove Press, Inc., 1961. 288 pages, $1.95.

As so well stated by the author in his introduction, "this book is not written for the professional lawyer . . ." Unfortunately, any reader picking up this volume who expects an objective study of capital punishment as the title implies, will be sorely disappointed. Perhaps a more appropriate title would be **Capital Punishment: An Advocates View for its Abolishment,** for the book is, in effect, a treatise calling for such.

By constantly equating advocates of capital punishment with those who advocate atomic deterrance, and then both groups to "antisocial forces" and "democracy's betrayers," one quickly gets the impression that Mr. Joyce would be much happier sitting at the feet of Bertrand Russell talking about "anti-bomb" demonstrations than attempting to present a complete view of the problems raised by capital punishment.

Perhaps the most irritating constant that one is exposed to is the author's almost complete disinterest for the innocent victim violated by those criminals exposed to the death penalty. Thus, Caryl Chessman becomes the "defeated hero of Death Row," and atomic-spys Julius and Ethel Rosenberg —the victims of the "unashamedy chauvinistic speech of Judge Kaufman." The victims are usually antisocial enough to get themselves killed by such "heroes" as Chessman.

There have been objective, critical, professional studies of capital punishment which have treated both the pro and the con view fairly, while advocating one or the other. This is not such a study. Perhaps the author should become acquainted with the scientific method. Or maybe he's happier blithely ignoring reality.—S. S. C.